

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC
DEBTOR

CASE NO. 10-93904
CHAPTER 11

**RESERVATION OF RIGHTS AND OBJECTION TO THIRD INTERIM
APPLICATION OF KROGER, GARDIS & REGAS, LLP FOR
COMPENSATION AND REIMBURSEMENT OF EXPENSES AS
SPECIAL COUNSEL TO CHAPTER 11 TRUSTEE**

Come Alton Darnell, East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., and Southeast Livestock Exchange, LLC (collectively, the “Creditors”), by counsel, and hereby object on an interim basis and reserve for the final fee application all objections to the allowance of fees and expenses of Kroger, Gardis & Regas, LLP (“KGR”). In support of this Reservation of Rights and Interim Objection, the Creditors respectfully state as follows:

BACKGROUND

1. On December 27, 2010, after consideration of the Notice of Appointment and Application for Order Approving Appointment of Trustee [Doc 98] and the accompanying Trustee’s Verified Statement and Notice of Acceptance [Doc 98-1] and Affidavit of Disinterest [Doc 98-2], the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc 102] in the above-captioned bankruptcy case.

2. On February 12, 2012, James A. Knauer, as Chapter 11 Trustee for the Estate of Eastern Livestock Co., LLC (the “Trustee”), filed his Application to Employ Kroger, Gardis &

Regas, LLP as Special Counsel to the Trustee [Doc 1056]. This Application was approved by Order of the Court [Doc 1084] on March 13, 2012.

3. On November 20, 2012, KGR filed its First Interim Application for Compensation and Reimbursement of Expenses as Special Counsel to Chapter 11 Trustee [Doc 1545] (the “First Interim Application”). This Application was approved on an interim basis by Interim Order of this Court entered on December 18, 2012 [Doc 1650].

4. On March 20, 2013, KGR filed its Second Interim Application for Compensation and Reimbursement of Expenses as Special Counsel to Chapter 11 Trustee [Doc 1905] (the “Second Interim Application”). This Application was approved on an interim basis by Interim Order of this Court entered on September 12, 2013 [Doc 2346].

5. On October 24, 2013, KGR filed its Third Interim Application for Compensation and Reimbursement of Expenses as Special Counsel to Chapter 11 Trustee [Doc 2400] (the “Third Interim Application”), which is at issue herein.

OBJECTION AND RESERVATION OF RIGHTS

6. For reasons previously stated, the Creditors continue in their objections to the allowance of fees and expenses for the Trustee’s law firm KGR on both an interim and final basis. Due to undisclosed written agreements entered into by the Trustee which significantly limited the Trustee as the sole representative of the Estate, the services provided by KGR, the Trustee’s law firm, are also tainted by the nondisclosure and remain subject to final objection and final review at the time of the filing of a final application.

7. To the extent that the Court enters an interim order approving the Third Interim Application, the order will not be a final approval of any fees or expenses. *See Matter of Taxman Clothing Co.*, 49 F.3d 310, 312 (7th Cir. 1995) (“The law is clear . . . that all interim

awards of attorney's fees in bankruptcy cases are tentative.") (citations omitted); *In re Eckert*, 414 B.R. 404, 409 (Bankr. N.D. Ill. 2009) ("Interim fee awards under 11 U.S.C. § 331 are discretionary and are subject to reexamination and adjustment during the course of the case The Court may review the case at its conclusion and take into account the results obtained in making a final allowance.") (citations omitted); *In re Gibson*, 2010 WL 774573, *10 (Bankr. C.D. Ill. 2010) (interim orders allowing fee applications are subject to further review and modification by court) (citations omitted). The same is true of the First and Second Interim Applications.

8. Against this background, a lengthy objection to the Third Interim Application is not required at this interim stage. The Creditors reserve any and all rights to object to the final fee application filed by KGR in this Bankruptcy Case.

9. If the Court grants an interim allowance, before any payment of same, the Trustee should be ordered and directed to provide additional information to the creditor body on more current Estate information and updated estimated creditor distributions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2013, a copy of the foregoing Objection was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on November 13, 2013, a copy of the foregoing Objection was served by first-class U.S. mail, postage prepaid, or by electronic mail as indicated, to the following:

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